

BUILDING THE GAL REPORT

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A. There is no standard format for a GAL report.

The following is a suggestion for a structure that would allow the inclusion of all relevant information. Initially, the GAL should memorialize each interview or communication about the minor child in a written memo as soon as practical, especially while it is still fresh in the memory. This memo should include the interviewee's name, the date and location of the interview, and all information asked and given. The GAL should also summarize any relevant documents that were obtained and analyzed.

B. OPENING PARAGRAPH.

Because GAL reports contain confidential information, the first page of the GAL Report should include the Caption of the case and the following statement:

"Comes now xxxxxxxxxxxxxxxx, duly appointed Guardian ad Litem by an Order entered in this cause, and having made investigation, submits this report and recommendation to the Court concerning the minor children named herein.

DUE TO THE HIGHLY SENSITIVE SUBJECT MATTER AND CONFIDENTIAL INFORMATION HEREIN, THE GUARDIAN AD LITEM RESPECTFULLY REQUESTS THAT THE FOLLOWING REPORT AND RECOMMENDATION BE SUBMITTED AND FILED UNDER SEAL WITH THE CLERK OF COURT, AND THAT THE PARTIES BE INSTRUCTED NOT TO DISCUSS THE CONTENTS OF THIS REPORT WITH ANYONE OTHER THAN THEIR ATTORNEYS."

A separate Order can be presented to the trial judge which provides that the GAL report is to be filed under seal.

C. INTRODUCTION.

This section will introduce the parties and provide a brief summary of the case. The first sentence is often: "This report addresses the issue(s) of [ISSUE - custody, visitation, allegations, etc.] between [NAMES OF PARTIES]. The child is then introduced, along with a date of birth and current age. The next paragraph or two should briefly summarize the parties' history and how the GAL was appointed.

D. SUMMARY OF RECOMMENDATIONS.

This section will summarize the GAL's recommendations that are provided in more detail later in the report. Sometimes, the report will include an alternative recommendation should the judge not agree with the initial recommendation.

E. PROCEDURAL HISTORY.

This section would lay out the pleadings, hearings and other events that have led to the final hearing where the report will be presented. This can be done in a narrative format or in a table format.

F. TIME LINE OF SIGNIFICANT EVENTS.

This section can be a table of two columns. The first column provides the date, with the second column stating the event that occurred on that date. The entries should list the events that have had an impact on the parties, children, and case.

G. KEY INDIVIDUALS INVOLVED IN THE CASE.

This section is simply a list of the individuals involved in the case, including the children. Each person other than the children should be defined by their relationship to the child or role in the child's life. For example, "natural father of the child," "maternal aunt of the child," or "first grade teacher of the child."

H. INVESTIGATION - - INTERVIEWS AND DOCUMENT REVIEW .

This section will contain all of the interview narratives, after each narrative has been thoroughly edited. The interview section should be divided into subsections of persons interviewed, in chronological order of interviews. A person's subsection might include further subsections for multiple interviews and/or home visits. In other words, each interviewee should have his or her own section. If that interviewee was interviewed more than once, then there should be a subsection for each interview under that person's section, also in chronological order. Sometimes, a person will send the GAL an email containing relevant information. This email should be copied into a subsection under that person's Interview section. An example of how the Interviews section might be set up is as follows:

INVESTIGATION

- A. FIRST PERSON INTERVIEWED (usually one of the parties)
 - 1. Initial Interview - Date of Interview
 - 2. Home Visit - Date of Home Visit
 - 3. Follow-up Interview - Date of Interview

- B. SECOND PERSON INTERVIEWED (usually the other party)
 - 1. Initial Interview - Date of Interview
 - 2. Home Visit - Date of Home Visit

- C. THIRD PERSON INTERVIEWED (maybe the child, a relative, a professional)
 - 1. Initial Interview - Date of Interview

- D. FOURTH PERSON INTERVIEWED
 - 1. Initial Interview - Date of Interview

2. Email from Fourth Person - Date of Email

E. REVIEW OF DOCUMENTS.

This section will contain a summary of the documents that were analyzed or other communications provided by someone involved in the case, such as texts, social media posts, or emails between persons other than the GAL. Each document or communication will be detailed or summarized in its own subsection. Sometimes, a subsection will need further subsections in order to clarify the information. For example:

A. SOCIAL MEDIA INFORMATION

1. Text messages or e-mails between the Parties
2. Text messages or e-mails from third parties
3. Facebook posts

Note that printouts from social media have special requirements for authentication.

See *Smith v. State*, 136 So.3d 424, 433 (¶ 20) (Miss. 2014)
“Because of the special concerns regarding fabrication, ‘the fact that an electronic communication on its face purports to originate from a certain person's social networking account is generally insufficient standing alone to authenticate that person as the author of the communications.’”

White v. State, 228 So.3d 893, 899 (¶ 12) (Miss. App. 2017)
“Authentication is a condition precedent to admissibility of evidence. *Smith v. State*, 136 So.3d 424, 432 (¶ 18) (Miss. 2014). ‘A party must make a prima facie showing of authenticity, and then the evidence goes to the jury, which ultimately will determine the evidence's authenticity.’ *Id.* (citing *Young v. Guild*, 7 So.3d 251, 262 (¶ 32) (Miss. 2009)). ‘Electronic evidence may be authenticated by the traditional means, and is adequately covered by the current rules of evidence, but the circumstantial evidence that tends to authenticate a communication is somewhat unique to each medium.’ *Id.* **Because social-media posts are subject to fabrication, ‘something more’ than the account owner's name and photograph is required to authenticate the posts.**” *Id.* at (¶ 20).

B. CHILD'S MEDICAL RECORDS

C. SUMMARY OF DCPS INVESTIGATION (with subsections if

there were multiple reports)

D. SCHOOL RECORDS

E. PHOTOGRAPHS

I. APPLICABLE LEGAL STANDARDS.

The current case law provides that the GAL is obligated to address the legal standards applicable to the issues raised. A case may involve one legal standard, or it could involve multiple standards. Each legal standard section should be clearly stated: First, state the issue of the dispute (e.g. Modification of Custody, Third Party Visitation, etc.). Second, state the rule that applies to the court's resolution of that issue. Third, apply the facts of the case at hand to the issue and its rule. Finally, reach a recommendation as to whether, in your opinion, the case at hand meets the elements of the rule.

J. ALBRIGHT ANALYSIS

Many of the cases that you investigate will need to include an analysis of the Albright factors. In an Albright analysis, the GAL must address each of the factors by applying facts in the case to each factor, and weighing whether that factor favors one parent/custodian over another:

The Albright facts may vary slightly, depending on which case you read, but the following is a list of common factors that the appellate courts have recognized:

1. Age, Sex, and Health of the Child
2. Which Parent had the Continuity of Care Prior to the Separation
(Note that some cases consider continuity of care **AFTER the separation.**)
3. Which Parent has the Best Parenting Skills
4. Willingness and Capacity to Provide Primary Childcare
5. Employment of Each Parent and Responsibilities of that Employment
6. Physical and Mental Health and Age of Parents
7. Emotional Ties Between Parent and Children
8. Moral Fitness of the Parties
9. Home, School, and Community Record of the Child
10. Preference of a Child Twelve or Older
11. Stability of the Home Environment and Employment of Each Parent
12. Other Factors Relevant to the Parent-Child Relationship - these may include Smoking in the Home; Dangerous Pets in the Home; Separation of Siblings; Financial Situation of Parents; Differences

in Religion; Differences in Personal Values; Bullying Potential Witnesses; etc.

K. RECOMMENDATION.

As stated before, the GAL makes a recommendation to the Court, after investigating the case and based on the GAL's opinion of what would be in the best interest of the child and will also comply with the legal standard. The Chancellor is not required to follow the GAL's recommendation. If the appointment is mandatory, however, then the Chancellor must include in the Court's findings the Chancellor's reasons for rejecting the recommendation.

This section should provide the details of the GAL's recommendation to the Court, which will include an explanation of how the GAL reached this recommendation. That might involve a summary of the legal standard discussion and/or the Albright analysis.

The final paragraph of the Recommendation section should list provisions that the GAL recommends be included in the final decree. The following includes the basic provisions that should be recommended, but the list may expand based on the case and the issues involved.

L. CONCLUSION

"Finally, the undersigned respectfully recommends that this Court include the following provisions in the final decree that is rendered in this case:

1. Both parents shall actively encourage the minor child to have a positive relationship with the other parent, and neither parent shall do anything that undermines the child's relationship with the other, or otherwise interferes with the other parent's relationship with the child.
2. Neither parent shall speak negatively about the other parent in the presence of the minor child or allow other persons to denigrate the other parent in the presence of the minor child, or in any way communicate or expose the minor child to any negative information about the other parent.
3. Both parents shall set aside any personal animosity and cooperate with one another in following the custody schedule that is established by this Court, and in exchanging custody of the minor child, and in making reasonable accommodations to the other parent when unforeseen circumstances arise.
4. Neither parent shall discuss any of the court proceedings with the minor child.
5. Neither parent shall consume alcohol excessively while the minor child is in their custody nor allow the child to be in the presence of others who are using alcohol excessively.

6. Neither parent shall use illegal drugs or prescription medications that could impair their ability to care for the minor child while in their custody nor allow the child to be in the presence of others who are using illegal drugs."

In addition, **the CONCLUSION should always be the following disclaimer:**

"All facts and events disclosed to the GAL by the persons interviewed are present in this report. The GAL has also provided information from the documents reviewed in this investigation. The GAL has based this Report and Recommendation on the assumption that all facts that have been provided are true and accurate as reported in the interviews. As this is a pending case, new or conflicting evidence could arise hereafter that may alter the view and opinion of the GAL. Therefore, the undersigned reserves the right to modify this Report and Recommendation after hearing all sworn testimony and/or receiving such additional evidence as may be presented at the trial on the merits."